HOUSE DOCKET, NO. 3578 FILED ON: 2/19/2021

HOUSE . . . . . No. 1047

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to reform title insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Antonio F. D. Cabral	*13th Bristol*	*2/19/2021*
Brian W. Murray	*10th Worcester*	*2/23/2021*
Christopher Hendricks	*11th Bristol*	*2/25/2021*

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HOUSE . . . . . No. 1047

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 1047) of Antonio F. D. Cabral, Brian W. Murray and Christopher Hendricks for legislation to reform title insurance. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act to reform title insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws, as so appearing in the 2018 Official Edition, are hereby amended by inserting after chapter 174C the following chapter:-

CHAPTER 174D

TITLE INSURANCE LAW

Section 1. Short Title. This chapter shall be known and may be cited as the Title Insurance Law.

Section 2. Purpose. The purpose of this chapter is to promote the public welfare by prohibiting lender's title insurance from being assessed to buyers who refinance the mortgage on their home. Nothing in this chapter is intended to prohibit or discourage reasonable competition, or to prohibit, or encourage, except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices.

Section 3. Definitions. In this chapter—

(a) the term “applicant for insurance” shall be deemed to include approved attorneys, real estate brokers, real estate salesmen, attorneys at law and all others who from time to time apply to a title insurance company or to an agent of a title insurance company, for title insurance, and who at the time of such application are not agents for a title insurance company;

(b) the term “approved attorney” means an attorney at law in good standing upon whose examination of title and report of title thereon a title insurance company may issue a policy of title insurance;

(c) the term “refinancing” means the process of paying off an existing home loan by obtaining a new home loan and using the same property as security;

(d) the term “business of title insurance” means—

(1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance;

(2) the transacting, or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or

(3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this article;

(e) the term “commissioner” means the Massachusetts commissioner of insurance;

(f) the term “company” means all corporations, associations, partnerships or individuals engaged as principals in the business of insurance and authorized to transact business in this commonwealth under clause 11 of section 47 of chapter 175;

(g) the term “insurance company” or “insurer” has the same meaning as “company”, defined in subsection (f);

(h) the term “rates”, when referring to title insurance, means the premium, the examination and settlement or closing fees, and every other charge, whether denominated premium or otherwise, made by a title insurance company, agent of a title insurance company and approved attorney of a title insurance company, to an insured or to an applicant for insurance, for any policy or contract for the issuance of, or an application for any class or kind of, title insurance. The term “rates” shall not include any charges paid by an insured or by an applicant for insurance, for any policy or contract, to an attorney at law acting as an independent contractor and retained by such attorney at law, whether or not he is acting as an agent of or an approved attorney of a title insurance company, or any charges made for special services not constituting title insurance, even though performed in connection with a title insurance policy or contract; and

(i) the term “title insurance” means the insuring, guaranteeing or indemnifying against loss or damage suffered by owners of real property or by others interested therein by reason of liens, encumbrances upon, defects in or the unmarketability of the title to said real property; guaranteeing, warranting or otherwise insuring the correctness of searches relating to the title to real property; and doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this article.

Section 4. Title Insurance Requirements.

(a) Any insurance company who engages in the business of title insurance must file quarterly statements with the commissioner and the attorney general that details the insurer's rates related to the sale of title insurance in the commonwealth.

(b) The statements set forth in subsection (a) shall be filed by January 1, April 1, July 1, and October 1 of each year.

(c) Within 10 days after each filing period, the commissioner shall post the schedule of rates for each title insurance company on the division of insurance's website.

(d) All filings and supporting information shall be open to public inspection after the filing becomes effective.

Section 5. Insurance Company Groups.

(a) Two or more insurers who, by virtue of their business associations in the United States, represent themselves to be or are customarily known as an "insurance company group", or similar insurance trade designation, shall have the right to make the same filings or to use the same rates for each such insurer. This chapter may not be construed to prohibit an agreement to make the same filings or use the same rates and concerted action in connection with such filings or rates by such insurers.

(b) This section shall not apply to 2 or more insurers who are not under the same common executive or general management or control and who act in concert in underwriting groups or pools.

Section 6. Except to the extent necessary to satisfy the provisions of section 7, nothing in this chapter shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions or between insurers and their employees with respect to compensation.

Section 7. Written Disclosure. All applicants for insurance, including agents, brokers attorneys and approved attorneys must provide a written disclosure to every prospective buyer of a title insurance policy at or prior to closing, which shall be signed by or on behalf of the buyer of the title insurance policy, and shall include the following disclosures:

(a) That the agent, broker, or attorney is an agent of the title insurance company.

(b) The total cost to the buyer for a lender's title insurance policy.

(c) The total cost to the buyer for an owner's title insurance policy, if applicable.

(d) The total amount of the cost that is dedicated to title insurance premiums.

(e) The total amount of the cost that is dedicated to commissions or fees paid to the agent, broker or attorney.

(f) The total amount of the cost that is dedicated to any other component of the transaction and a specification of what those other components are.

Section 8. Buyer Provisions.

(a) A buyer of a title insurance policy shall be entitled to the basic rate in accordance with subsection (e) of this section.

(b) A buyer of a title insurance policy shall be entitled to the reissue rate, in accordance with subsection (e), if the real property to be insured is identical to, or is part of, real property insured within the 15 years immediately prior to the date the insured transaction closes. Evidence of previous insurance must be considered in order to apply the reissue rate. As evidence of previous insurance, an insurer shall rely upon—

(1) the recording of either—

(i) a deed to a bone fide buyer for value; or

(ii) an unsatisfied mortgage to an institutional lender; or

(2) any of the following documents produced by or on behalf of the purchases of the title insurance policy:

(i) A copy of the prior policy.

(ii) A copy of the marked-up commitment.

(iii) A settlement sheet showing payment of a title insurance premium.

(iv) Written evidence acceptable to the insurer that title insurance coverage was purchased for the property.

(c) In the event that a current homeowner seeks title insurance at the time of a refinancing through a different lender than the original lender on a home mortgage, the homeowner shall be entitled to the reissue rate, in accordance with subsection (e), if evidence of previous insurance is provided in accordance with the provisions of subsection (b).

(d) In the event that a homeowner seeks title insurance at the time of a refinancing of a home mortgage through the same lender or a successor-in-interest to the original lender on a home mortgage, the title insurance company shall issue the homeowner a continuation of his title insurance at no additional cost from the original title insurance payment. The homeowner shall provide evidence of—

(1) previous insurance, in accordance with subsection (b); and

(2) a continuous and unbroken chain of ownership.

(e) The rate charged to customers who do not qualify for the reissue rate or a refinance waiver under subsections (b), (c) and (d) shall be charged the insurer's basic rate as reported to the commissioner. The reissue rate shall be 50 per cent of the basic rate.

(f) A clear and conspicuous written notice must be provided to every prospective buyer of a title insurance policy at or prior to closing that must be signed by or on behalf of the buyer of the title insurance policy. Said notice shall include the following disclosure:

THIS CONVEYANCE OR REFINANCE MAY BE ENTITLED TO A REDUCED RATE OR WAIVED PURCHASE REQUIREMENT UNDER M.G.L. CHAPTER 174D.

Section 9. No person or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter.

Section 10. Any person or organization willfully violating any provision of this chapter shall be punished by a fine of not more than $500 for each violation. Such penalty may be in addition to any other penalty provided by law.